IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 18218 of 2006(R)

PETITIONER:

K.J.ANTONY, S/O. PUNNOOSE JOSEPH,
AGED 54 YRS, RESIDING AT KOZHUPPAKALAM HOUSE,
VEETICHIRA, PUNNATHALA P.O., VIA VALANCHERY,
MALAPPURAM DISTRICT, PIN-676 552. (PETITIONER WORKING AS TEACHER IN A.M.U.P. SCHOOL, POOLAMANGALAM).

BY ADV. SRI.A.X.VARGHESE

RESPONDENTS:

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1. STATE OF KERALA, REP. BY
SECRETARY, GENERAL EDUCATION DEPARTMENT,
MINISTRY OF EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

3. DISTRICT EDUCATIONAL OFFICER,
TIRUR.

4. ASSISTANT EDUCATIONAL OFFICER,
KUTTIPPURAM.

5. THE MANAGER,
A.M.U.P.SCHOOL, POOLAMANGALAM,
PUNNATHALA P.O., MALAPPURAM DISTRICT,
PIN - 676 552.

R1 TO R4 BY GOVERNMENT PLEADER (SMT. M.R. SREELATHA)

R5 BY ADV. SRI.R.K.MURALEEDHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 5.2.2007 ALONG WITH WPC NO. 27162 OF 2006, THE COURT ON 25.9.2007 DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C). NO. 18218 OF 2006 R

PETITIONER'S EXHIBITS:

EXT.P1 PHOTO COPY OF THE JUDGMENT DATED 29.7.2005 IN W.P.(C). NO.16630/05 OF THIS HONOURABLE COURT.

EXT.P2 PHOTO COPY OF THE ORDER NO.B4-9696/05/K. DIS. DATED 9.9.2005.

EXT.P3 PHOTO COPY OF THE REPRESENTATION DATED 7.11.2005.

EXT.P4 PHOTO COPY OF THE JUDGMENT DATED 23.3.2006 IN W.P.(C). NO.7500/2006 OF THIS HONOURABLE HIGH COURT.

EXT.P5 PHOTO COPY OF THE GOVERNMENT ORDER (RT) NO.1526/06/G. EDN. DATED 17.4.2006.

EXT.P6 PHOTO COPY OF THE MERCY PETITION DATED 1.6.2006.

EXT.P7 PHOTO COPY OF THE NOTICE DATED 6.6.2006.

EXT.P8 PHOTO COPY OF THE ORDER NO.G2-25275/06/DPI/D.DIS DATED 21/6/06.

EXT.P9 PHOTO COPY OF SERVICE BOOK FOR PROVING THE SENIORITY.

EXT.P10 PHOTO COPY OF THE CIRCULAR OF DIRECTOR OF PUBLIC INSTRUCTION.

RESPONDENTS' EXHIBITS:

EXT.R5(A) TRUE COPY OF THE REPRESENTATION DATED 24.6.2004.

EXT.R5(B) TRUE COPY OF THE RELEVANT PAGE OF SERVICE BOOK.

EXT.R5(C) TRUE COPY OF THE COMMUNICATION DATED 31.1.94.

EXT.R5(D) TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT.

EXT.R5(E) TRUE COPY OF THE COMMUNICATION FROM 3RD RESPONDENT AND FORWARDED BY THE FOURTH RESPONDENT DATEDF 11.5.2005.

W.P.(C). NO. 18218/06

EXT.R5(F) TRUE COPY OF THE PROCEEDINGS DATED 28.2.2006.

// TRUE COPY//

PS TO JUDGE.

K. M. JOSEPH, J.

W.P.C. NOS. 18218/06 R & 27162/06 H

Dated this the 25th September, 2007

JUDGMENT

Since these Writ Petitions are connected, they are disposed of by a common Judgment.

2. W.P.(C) No.18218/06 is filed by one Shri K.J. Antony (hereinafter referred to as Shri Antony). Shri Antony challenges Exts.P5 and P8 and seeks a direction to respondents to promote him as Headmaster in AMUP School, Poolamangalam, Tirur Education District, and to approve his appointment as Headmaster.

3. W.P.(C) No.27162/06 H is filed by the Manager and Shri M.R. Narayanan Nair, seeking a direction to the second respondent AEO, to approve the appointment of the second petitioner as Headmaster with effect from 1.6.2005 and disburse all consequential benefits.

4. The brief case in W.P.(C) No. 18218/06 is as follows:

Shri Antony has passed B.Sc. in Zoology, B.Ed. and also

Account Test. The A.M.U.P. School was established in 1964 by one K.P. Kunhjapputty and after his demise in 1989, his son Shri K.P. Sainudheen took charge as Manager, and after his demise, Shri K.P. Rasaq took charge as the Manager. Since he was a Clerk in Z.M. High School, he resigned from the post of Manager and entrusted another brother, Shri K.P. Hamza as Manager who is working in Abudabi Municipality and comes once in a year. A vacancy of Headmaster arose on 30.4.2005. In spite of the petitioner's superior qualifications and is an eligible claimant, he was not appointed. One Shri P. Abdurahman was given charge, overlooking the Circular dated 31.7.1995. A Complaint was filed. Thereupon, the Manager appointed Shri Narayanan Nair as Headmaster of the School on 1.6.2005. The AEO declined approval. An Appeal was filed by the Manager before the DEO. Petitioner approached this Court and this Court by Ext.P1 Judgment directed Shri Antony to be impleaded in the Appeal filed by the Manager and take a decision in the matter. The DEO passed Ext.P2 order rejecting

the contention of the management that the School had minority status on the ground that the management had not produced any document showing minority status. Shri Antony made Ext.P3 representation for implementing Ext.P2 order. He filed another Writ Petition which was disposed of by Ext.P4 Judgment, directing that the revision petition stated to have been filed by the Manager shall be considered. In the meantime, the Government passed Ext.P5 order dated 17.4.2006, as per which it accorded minority status to the AMUP School, Poolamangalam under Article 30(i) of the Constitution of India. Ext.P8 is the order passed in the revision. Therein, referring to Ext.P5 order and noting that the management can appoint any qualified person in the seniority list as HM of the School, the Appeal preferred by Shri Antony was rejected, finding that it deserves no consideration. Shri Antony challenges Exts.P5 and P8. The grounds raised are that Ext.P5 order was passed by the erst-while Government, since declaration of general election on 1.3.2006 and the purpose of Ext.P5 is to defeat the provisions of

the KER with malafide intention and hence vitiated by an error apparent on the face of the record. It is issued arbaitrarily without hearing the affected person, the petitioner, it is contended. It is also stated that if the intention of the impugned order is examined, it could be understood as an hasty decision of the Government, and it is further stated that while passing Ext.P5 order, the Government must have found that it is against Article 14 of the Constitution and relevant provisions of the KER. Violation of principles of natural justice is made another ground. It is further stated that the first respondent ought not have given it a minority status as there is no necessity to do so in this particular case. It is stated that there is no provision in the Act and the Rules for awarding status of minority to any school receiving aid from the Government. As per Rules 44 and 44(a) of Chapter XIV A KER, the senior-most teacher of the School at the time of occurrence of a vacancy of HM is entitled to be promoted as HM and that fundamental right under Article 14 is available to the petitioner and it is being taken away by the

impugned order.

5. In the Counter Affidavit filed by the fifth respondent, it is stated, inter alia, as follows:

The School was started in the year 1964 by the deponent's father. It was established for the upliftment of the members of the Muslim Community. The School is following Muslim Calendar by which Fridays and Mondays are holidays during the Ramzan month. Fifth respondent applied by Ext.R5(a) representation dated 24.6.2004 for minority status. Reports were called for from respondents 2 to 4, and respondents 3 and 4 conducted detailed enquiry. It is stated that notice was issued to the petitioner and after receipt of notice, he did not appear in the hearing. It is stated that there is no case that the School is not established or maintained by a minority management. It is the further case that no purpose would be served by a hearing. Ext.R5(b) is a relevant page of the Service Book. It is stated that the petitioner was suspended on a complaint from two lady teachers. It was enquired into and found, prima facie, true and

he was placed under suspension. Ext.R5(c) is a communication requesting conducting of formal enquiry. Ext.R5(d) is the order produced to show that incidents have taken place and the petitioner was warned not to repeat this. It is also stated that the petitioner is in the habit of filing frivolous complaints before the Educational Authorities. Government has also filed Counter Affidavit. Petitioner has filed a Reply Affidavit stating that the petitioner has completed fiftyfour years of age. It is stated that minority status was granted on 17.4.2006 after declaring general Assembly election and the code of conduct came into effect on 1.3.2006. It is stated that the parents of the students of the School requested the Government not to declare the institution as a minority institution. The allegation in paragraph 5 of the Counter Affidavit regarding that Assistant Director (Planning) heard all the parties is not fully correct, it is stated. It is stated that the petitioner is the only senior Graduate Teacher under Rule 45 of Chapter XIV A KER. It is also stated that it is to overlook the petitioner's seniority, as vengeance, the fifth

respondent has done many things by hook or crook. It is stated that fundamental rights are supreme and Articles 14 to 16 are supreme than Article 30(1) of the Constitution of India.

6. I would note that the petitioner does not have a specific case that the School is not established and maintained by the minority. His main contention appears to be that he was not heard, and that there is no necessity to declare it as a minority institution, as there is no necessity to do so. Reference is placed on fundamental right under Article 14 to be promoted as HM. No doubt, it is also stated that the order is issued arbitrarily. It is stated to be a hasty decision.

7. There is no specific reply to the allegation in the Counter Affidavit that it is learnt that notice was issued to petitioner and after receipt of notice, he did not appear for the hearing. At any rate, I would think that in the facts of this case, petitioner in W.P.(C) No.18218/06 is not entitled to succeed. Undoubtedly, it is true that the petitioner was the senior-most qualified hand to be appointed as HM. I would also agree with

the learned counsel for petitioner that the grant of minority status to the institution is a matter which would directly impinge on the legal right the petitioner has under Rule 44, to be appointed as HM. It is also true that before grant of minority status, there is no provision as such for hearing the senior-most teacher. But, I would think that the principles of natural justice have been developed to specifically cater to the situations where a right to be heard has to be imported in as a requirement to ensure that justice is done. Principles of natural justice would apply when an order is passed which would adversely affect the legal right of a person. It would also apply, if there is a legitimate expectation, which is sought to be taken away. In such circumstances, I would have been inclined to interfere with the impugned order on the basis that the petitioner was not actually heard. But, I would decline relief for the following reasons:

It is to be noted that this is a case where the finding in Ext.P5 is that the School was established by a person of the

minority community and it is still owned by a member who belongs to minority community. The student strength would show that in the year 2004 - 2005, 83 per cent of the students were Muslims and 81 per cent of the students were Muslims during the year 2005 - 2006. It is stated also that at present Muslim Calendar was followed in the School to suit the convenience of the Muslim students and teachers. Petitioner does not dispute these facts. In fact, as I have already noted, there is no case for the petitioner that the School was not established by a member of the minority community. Even though Shri A. X. Varghese would point that there are other Schools in the said area where most of the criteria mentioned in Ext.P5 are satisfied and they cannot be treated as minority Schools, I would think that the criteria adopted in Ext.P5 which I have referred to in Ext.P5, cannot be said to be irrelevant. I find that in fact in paragraph (4) of the Reply Affidavit in W.P. (C) No.18218/06, the petitioner has stated as follows:

> *"4. In the 3rd para further states that the petitioner was wilfully absent on 8.3.2006, when hearing was scheduled and conducted about Ext.R5(a) is absolutely wrong. This was not intimated to the petitioner and the petitioner has pointed about the same thing in the 10th para of Exhibit P6 mercy petition, dated 1/6/2006. If the petitioner could have intimated, the petitioner can highlight at least the students grievance, mismanagement of the 5th respondent etc. in the hearing."*

8. In such circumstances, I feel that even for proceeding on the basis that the petitioner was not heard, the contention of petitioner cannot be accepted. Having regard to the totality of facts, W.P.(C) No.18218/06 is dismissed.

9. As far as the other Writ Petition is concerned, the Writ Petition is disposed of directing that appropriate decision shall

be taken in accordance with law in regard to the approval of the second petitioner therein by the second respondent within a period of two months from the date of receipt of a copy of this Judgment.

K. M. JOSEPH, JUDGE

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